

REMARKS

Claims 1-9, 15-23, 25-31, 33, and 73-80, which were withdrawn from consideration, have now been cancelled without prejudice. Applicants reserve the right to pursue claims similar or identical to these claims in one or more applications claiming priority to this application.

In addition, Applicants have amended independent claims 34 and 49 to recite a dye, fluorescent molecule, or a chromogenic molecule. Support for this amendment can be found in the specification, for example, on page 35, lines 8-10.

Claim 41 has been rewritten to depend from claim 34, not claim 40, and claim 48 has been amended to recite an actuator integrally connected to the chip able to alter the environmental factor to clarify this claim and provide proper antecedent basis.

No new matter has been added by these amendments. Claims 34, 35, 41-44, 46-50, 53, 81, and 82 are now pending for examination.

Rejections under 35 U.S.C. §112 ¶2

Claims 41 and 48 have been rejected under 35 U.S.C. §112 ¶2, for being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claim 41 has been rejected for depending on claim 40, which is a cancelled claim. Applicants have rewritten claim 41 to depend from claim 34, as was suggested by the Examiner.

Claim 48 has been rejected for lacking antecedent basis for the term “the actuator” in line 2. Applicants have rewritten claim 48 to address this issue.

Accordingly, it is respectfully requested that the rejection of claims 41 and 48 be withdrawn.

Rejections under 35 U.S.C. §102(e) in view of Freeman

Claims 34, 35, 43, 44, 46, 47, 49 (listed in the Office Action as claim “59,” but believed to be a typographical error), 50, 53, 81, and 82 have been rejected under 35 U.S.C. §102(e) as being anticipated by Freeman, U.S. Patent No. 6,653,124 (“Freeman”).

To begin, Applicants do not concede that Freeman is properly prior art to the Applicants’ claimed inventions. Applicants reserve the right to establish invention dates for the claimed

inventions that are on or before the effective 35 U.S.C. §102(e) date of Freeman relied on in the Office Action.

Additionally, it is not seen where Freeman discloses or suggests a dye, a fluorescent molecule or a chromogenic molecule, as is recited in independent claims 34 and 49, as amended. While Freeman discloses sensors, Freeman does not describe sensors that comprise a dye, a fluorescent molecule or a chromogenic molecule. Accordingly, it is believed that independent claims 34 and 49 are not anticipated by Freeman, and it is thus respectfully requested that the rejection of these claims be withdrawn. The remaining claims each depend, directly or indirectly, from independent claims 34 or 49, and are believed to be allowable for at least the same reasons. Withdrawal of the rejection of these claims is also respectfully requested.

Rejections under 35 U.S.C. §102(e) in view of Sheppard

Claims 34, 35, 44, 46, 47, 49, 50, 53, and 82 have been rejected under 35 U.S.C. §102(e) as being anticipated by Sheppard, *et al.*, U.S. Patent No. 6,143,247 (“Sheppard”).

Initially, Applicants do not concede that Sheppard is properly prior art to the Applicants’ claimed inventions. Applicants reserve the right to establish invention dates for the claimed inventions that are on or before the effective 35 U.S.C. §102(e) date of Sheppard relied on in the Office Action.

Moreover, while Sheppard discloses the use of sensors in his devices, Sheppard nowhere discloses or suggests a sensor integrally connected to the device that comprises a dye, a fluorescent molecule or a chromogenic molecule, as is recited in independent claims 34 and 49, as amended. Thus, it is believed that these claims are patentable in view of Sheppard, and it is respectfully requested that the rejection of these claims be withdrawn. The remaining claims each ultimately depend from independent claims 34 or 49, and are believed to be allowable for at least these reasons. Withdrawal of the rejection of these claims is also respectfully requested.

Rejections under 35 U.S.C. §103(a) in view of Freeman, Sheppard, and Kapur

Claims 41, 42, and 48 have been rejected under 35 U.S.C. §103(a) as being unpatentable over either Freeman or Sheppard, each as applied to claim 34, in view of Kapur, *et al.*, U.S. Patent No. 6,548,263 (“Kapur”).

Claims 41, 42, and 48 each depend, either directly or indirectly, from claim 34. For at least the reasons explained above with respect to the rejection under §102 in view of Freeman or Sheppard, the premise of the rejection of claim 34 (that Freeman or Sheppard each teach all of the limitations of claim 34) is believed to be incorrect. Accordingly, while Applicants do not concede that there would have been any objective teaching, suggestion, or motivation to combine either Freeman or Sheppard and Kapur in the manner suggested in the Office Action, the present rejection cannot stand, regardless. Thus, withdrawal of the rejection of claims 41, 42, and 48 is respectfully requested.

Double Patenting Rejections

Claims 34, 35, 43, 44, 49, 50, and 53 have been provisionally rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 79-82 and 91-100 of co-pending Patent Application Serial No. 10/664,067, and over claims 70, 100, 101, 103, and 104 of co-pending Patent Application Serial No. 10/927,789.

Applicants acknowledge the rejection of claims 34, 35, 43, 44, 49, 50, and 53 on these grounds, but respectfully defer addressing this issue until later in prosecution, if necessary, depending on the prosecution of this application and any claims allowed in Serial Nos. 10/664,067 or 10/927,789.

CONCLUSION

In view of the foregoing amendments and remarks, this application should now be in condition for allowance. A notice to this effect is respectfully requested. If the Examiner believes, after the foregoing amendments and remarks, that the application is not in condition for allowance, the Examiner is requested to call the undersigned at the telephone number listed below.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicants hereby request any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

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